

INTRODUCTION

1. On December 6, 2018, DMEA filed its Complaint against Tri-State. The allegations of the Complaint are incorporated herein by reference. The Commission issued an Order to Satisfy or Answer on December 10, 2018, and Tri-State must respond by December 31, 2018. In addition, the Commission issued a Notice of Hearing on December 10, 2018 setting this matter for hearing on February 19, 2019.

2. As detailed in the Complaint, this proceeding follows DMEA's efforts over two years to exercise its right to withdraw from Tri-State and allow DMEA to pursue more economic and cleaner power supply alternatives. Tri-State's prescribed exit charge for withdrawal, however, is unjust, unreasonable, and discriminatory. DMEA accordingly requests that the Commission establish a just, reasonable, and nondiscriminatory exit charge, consistent with the Commission's statutory authority and mandate under Colorado Public Utilities Law (Articles 1 through 7 of Title 40, C.R.S.)

3. Colorado Public Utilities Law provides that the Commission "shall conduct its proceedings in such manner as will best conduce the proper dispatch of business and the ends of justice."¹ The length of time DMEA has already been engaged in the withdrawal and exit charge process underscores the importance of timely adjudicating the relief requested in the Complaint and for the Commission to provide a just, reasonable, and nondiscriminatory exit charge. Accordingly, DMEA requests through this motion that the Commission act to establish a procedural schedule. The Commission will often wait until after a respondent in a formal complaint proceeding files its answer before setting a full procedural schedule. However, establishing a procedural schedule at the outset, with the filing of testimony commencing in February 2019, is warranted to provide for the timely resolution of this proceeding. Further, the

¹ § 40-6-101(1), C.R.S.

proposed schedule set forth below allows time for preliminary motion practice, should Tri-State file any such motions. The proposed schedule also assumes the Commission will ultimately move the February 19, 2019 hearing date to accommodate a longer procedural schedule with pre-filed testimony, statements of position, and an evidentiary hearing on the Complaint, consistent with Commission practice.

4. Finally, this motion requests that the Commission hear this matter *en banc*. DMEA respectfully submits that given the key legal and policy questions at issue in the Complaint and the potential impact on DMEA's retail member-owners, it is appropriate for the Commission to designate this proceeding as one to be heard *en banc*.

LEGAL STANDARD AND REQUESTS FOR RELIEF

I. Request for a Procedural Schedule

5. Rule 1302(c) provides that “[t]he Commission may expedite a formal complaint proceeding on its own motion or upon the motion of a party if such motion shows good cause [].”² If the Commission determines to expedite a formal complaint, it shall establish the expedited procedural schedule, including hearing dates, and may impose appropriate limits on discovery.³

6. Section 40-6-108(4), C.R.S. provides that the Commission shall hold a hearing and issue a final order in complaint cases within 210 days after the filing of testimony and exhibits by the Complainant.⁴ In addition, Rule 1405(j) specifies that in complaint proceedings, parties shall file and serve their testimony “as ordered by the Commission,”⁵ reinforcing the Commission’s discretion to set procedural deadlines in complaint cases.

² 4 CCR 723-1-1302(c).

³ 4 CCR 723-1-1302(c)(I)-(II).

⁴ § 40-6-108(4), C.R.S.

⁵ 4 CCR 723-1-1405(j).

7. DMEA proposes the following procedural schedule in this proceeding:

Proposed Procedural Schedule	
Date	Procedural Activity
February 1, 2019	DMEA files Direct Testimony (initiating 210-day statutory timeline, which will conclude August 30, 2019)
March 18, 2019	Respondent Tri-State files Answer Testimony
April 17, 2019	DMEA files Rebuttal Testimony
May 8-13, 2019	Evidentiary Hearing
May 23, 2019	Statements of Position Due
July 11, 2019	Commission Decision
July 31, 2019	Applications for Rehearing, Reargument, or Reconsideration Due
August 30, 2019	Commission RRR Decision (if any)

8. DMEA notes this procedural schedule is not “expedited” per se; rather, it fits the entire process into a 210-day period from the filing of direct testimony, consistent with § 40-6-108(4), C.R.S. Nevertheless, it is expedited in the sense that DMEA requests the Commission establish a procedural schedule now. Setting a date certain for the filing of direct testimony will allow DMEA to continue to prepare and file expert and related testimony in order to assist the Commission in adjudicating a just, reasonable, and nondiscriminatory exit charge.

9. It is appropriate to establish this procedural schedule now, given the likelihood of preliminary motion practice by Tri-State. This proposed procedural schedule is intended to accommodate, to some degree, such motion practice. DMEA understands that Commission decisions on any such preliminary motion may not issue by February 1, 2019, given that the Order to Satisfy or Answer issued December 10, 2018, and Tri-State’s answer or any other dispositive briefing will not be filed until December 31, 2018. Nevertheless, DMEA is prepared and willing to undertake the expense and effort required to develop and file its direct case by

February 1, 2019. As discussed above, DMEA has tried for more than two years, without success, to obtain a just, reasonable, and nondiscriminatory exit charge from Tri-State. Time is accordingly of the essence, and DMEA therefore wants to advance this proceeding in as efficient a manner as possible.

10. Under DMEA's proposed procedural schedule, the Commission would issue a decision by July 11, 2019. The proposed procedural schedule also accounts for any applications for Rehearing, Reargument, or Reconsideration (RRR) that may be filed following the Commission's decision. DMEA therefore respectfully requests that the Commission issue its decision in this proceeding by July 11, 2019. This procedural schedule spans 210 days and fits within the statutory limit imposed by § 40-6-108(4), C.R.S.

II. Request for Commission Hearing *En Banc*

11. Under Colorado law, the Commission is vested with the authority to “conduct its proceedings in such a manner as will best conduce the proper dispatch of business and the ends of justice.”⁶ Under § 40-6-101(2)(b), C.R.S., every case submitted to the Commission for adjudication shall first be heard by an administrative law judge (ALJ) “*unless* the Commission, by minute order, assigns the case to the commission [] for hearing.”⁷ Rule 1404(a) similarly provides that “*unless the Commission orders otherwise*, all matters submitted to the Commission for adjudication shall be referred to a hearing Commissioner or an Administrative Law Judge.”⁸ Both the statute and the rule give the Commission power to assign a proceeding for hearing by the full Commission, rather than an ALJ. Because this case involves important legal and policy issues for the future of energy supply in Western Colorado, and because time is of the essence in

⁶ § 40-6-101(1), C.R.S.

⁷ § 40-6-101(2)(b), C.R.S. (emphasis added).

⁸ 4 CCR-723-1-1404(a) (emphasis added).

determining the future of power supply for DMEA's retail member-owners, it is appropriate for the Commission to hear the merits of DMEA's Complaint *en banc*.

WHEREFORE, DMEA respectfully requests that the Commission issue an order adopting the procedural schedule set forth in this motion and determining that it will hear this proceeding *en banc*.

DATED this 10th day of December, 2018.

Respectfully submitted,

/s/ Matthew S. Larson

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**ATTORNEYS FOR DELTA-MONTROSE
ELECTRIC ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December 2018, a copy of the foregoing **MOTION REQUESTING THE COMMISSION ESTABLISH A PROCEDURAL SCHEDULE AND REQUEST FOR COMMISSION HEARING *EN BANC*** was filed with the Colorado Public Utilities Commission via e-file and a copy was served via e-mail to the following:

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/s/ Hannah Bucher
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